

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 9264
)
Appeal of)

INTRODUCTION

The petitioners appeal the decision of the Department of Social Welfare (DSW) to close their ANFC grant due to the receipt of lump sum income.

FINDINGS OF FACT

1. In May of 1989, a DSW income maintenance specialist learned from an anonymous source that the petitioners, who were ANFC-UP recipients, may have received a substantial lump sum payment in the recent past from an insurance settlement.

2. On June 2, the specialist wrote to the recipients asking them to contact her about the information she had received. When they confirmed the truth of the anonymous report, the specialist verified the receipt of the income through a letter from the petitioners' attorney.

3. The verification document indicated that petitioner D.B. had received \$13,642.75 in settlement of a tort claim and, after medical and legal fees were deducted, D.B. actually received \$8,529.82.

4. Pursuant to that information, the specialist prepared and sent a notice to the petitioners on June 9, 1989, advising them that the receipt of that lump sum income

made them ineligible from June 30, 1989, until March 1, 1989, based on dividing the standard of need for four into the \$8,529.82 actually received by the family.

Subsequently, the specialist discovered that the calculation was in error and sent a corrected notice identifying the date of re-eligibility as January 15, 1990. The notice also advised the petitioners that their period of ineligibility could be recalculated if their circumstances changed.

5. The petitioners timely appealed that notice on June 12, 1989 and their ANFC benefits have continued throughout this hearing process.

6. On June 19, 1989, the petitioners brought verification of the amount of the lump sum still in their possession for purposes of assessing their continued eligibility for Medicaid and Food Stamps. It was determined that the petitioners had less than \$1,000.00 in their possession of the original \$8,529.82. Therefore, their eligibility for those programs was not affected.

7. The documentation brought by the petitioners showed that they spent over \$7,000.00 on the following items: car and car parts, appliances, clothing, TV and stereos and food. No sums were spent on medical expenses. No evidence was presented that any of these expenditures were for reasons beyond their control.¹

8. The petitioners asked that their period of disqualification be shortened due to the expenditure of some or all of their lump sum on necessary items. After

reviewing the items purchased, the specialist determined that none of the expenditures qualified to reduce the lump sum amount under the regulations.

ORDER

The Department's decision is affirmed.

REASONS

The department's regulations with regard to the receipt of lump sum income provide in pertinent part as follows:

2250.1 Lump Sum Income

The applicant or recipient of ANFC is responsible for notifying the Department promptly upon receipt of any lump sum payment of earned or unearned income.

Lump sum payments, including windfall payments, shall be counted as income unless excluded under an exception cited below. Lump sum payments, including windfall payments, which have been set aside in a trust fund and which are excluded in accordance with ANFC policy relating to "Trust Funds" shall not be counted as income.

Additional exceptions to the above regulation are:

. . . .

2) Insurance payments or similar third party payments, if received for payment of medical bills or funeral costs and used for those purposes, must be excluded. Also excluded would be a home owner's insurance payment (e.g. for a house which burned down) if it is used to rebuild or repair the house or purchase a new one.

. . . .

Lump sum payments which are not excluded should be added together with all other non-ANFC income received by the assistance group during the month. When the total less applicable disregards exceeds the standard of need for that family, the family will be ineligible for ANFC for the number of full months derived by dividing this total income by the need standard applicable to the family. Any remaining income will be applied to the first month of eligibility after the

disqualification period.

The period of ineligibility due to a lump sum benefit may be recalculated if:

1. An event occurs which, had the family been receiving assistance, would have changed the amount paid.
2. The income received has become unavailable to the family for circumstances beyond its control. Such circumstances include, but are not limited to, death or incapacity of the principal wage earner, or the loss of shelter due to fire or flood.
3. The family incurs and pays for medical expenses which offset the lump sum income.

There is no evidence that the Department was misinformed concerning the amount of income received by the petitioners or that an incorrect monthly standard was used to determine the period of disqualification. In addition, while at least some of the money used by the petitioner (e.g. for food) was inarguably for "necessaries", none of the expenditures presented by the petitioner can be found to fall into any of the regulatory categories set out above which qualifies for recalculation of the period of ineligibility. The Department properly excluded amounts spent for medical bills at the outset when it reduced the \$13,642.75 award to \$8,329.82.

As the Department's action is supported by its regulations, its decision must be upheld.

FOOTNOTES

¹Because the Department is contemplating bringing criminal fraud charges against the petitioners for allegedly failing to report their receipt of income, they were advised

at the hearing that their testimony before the Human Services Board could potentially be used against them in criminal proceedings. The petitioners, who were not represented by counsel, (although they had consulted with an attorney prior to the hearing) decided not to testify. Therefore, their defense is not on the record. Because the petitioners are receiving benefits pending resolution of their appeal, the department objected to continuing the matter.

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